

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 373 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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DINESHCHANDRA HEMATLAL (SMALERHUF)

Versus

COMMISSIONER OF INCOME TAX

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Appearance:

MR KC PATEL for Petitioner  
MR MANISH R BHATT for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 02/05/98

ORAL JUDGEMENT (Per R.K.Abichandani,J)

The Income Tax Appellate Tribunal has referred the following questions for the opinion of this court under Section 256(1) of the Income Tax Act, 1961.

1. "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in

holding that on the partial partition of the larger HUF the assessee could not form a smaller HUF with his wife in respect of the same property which was partitioned i.e. Rs.2,39,061/- . ?"

2. "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that it was necessary to blen with or throw into the common hotch potch of the HUF the property which he received on partition with his wife for the purpose of claiming it as HUF property."

3. "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in not following the decision of the Bombay Bench 'B' which relied upon the Allahabad High court decision and in following Special Bench decision?"

2. Both the learned Counsel appearing for the parties stated before us that in view of the decision of this court in ITR 306/83 and 308/83 wherein similar questions of law arisen out of the same partial partition of the bigger HUF as on 24.10.96 holding that the facts placed on record were either incomplete or insufficient and therefore declining to answer the question and remanding the matter to the Tribunal for disposal in accordance with law after ascertaining the relevant facts, similar course should be adopted in the matter. It was also pointed out that even in ITR No.313/83 dated 29.11.96 and the present reference which was on board alongwith that Reference appears to have been left out through oversight. In view of this request we decline to answer the questions referred to this court and remit the matter to the Tribunal for disposal in accordance with law after ascertaining the relevant facts.

3. This reference stands disposed of accordingly with no order as to costs.

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